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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OEC Logistics, Inc. *Plaintiff* v. Shipping & Transit, LLC *Defendant*	Case No. **Complaint For Declaratory Judgement of Non-Infringement & Invalidity**

Plaintiff's Complaint Seeking A Declaratory Judgement
As To Non-Infringement & Invalidity

Plaintiff OEC Logistics, Inc. ("OEC") respectfully files this Complaint seeking a declaratory judgment of non-infringement and invalidity as to United States Patent Nos. 6,415,207, 6,904,359, 6,763,299, and 7,400,970 (collectively, the "Patents-In-Suit").

NATURE OF THE ACTION

1. This is an action for a declaratory judgment of non-infringement arising under the patent laws of the United States, Title 35 of the United States Code.

2. OEC requests this declaratory judgment and equitable relief because: (1) S&T has sent to OEC cease and desist letters asserting the Patents-In-Suit and demanding licensing, past usage, and back damages, even though in prior litigation involving the Patents-In-Suit, S&T

voluntarily dismissed its cases to avoid a ruling on the merits regarding invalidity under 35 U.S.C. § 101; (2) S&T's infringement contentions are inconsistent with positions it has taken in pleadings in other infringement actions; (3) the Patents-In-Suit are clearly invalid under § 101; and (4) OEC does not infringe the Patents-In-Suit.

THE PARTIES

3. Declaratory Judgment Plaintiff OEC is a California Corporation with offices in San Francisco and Los Angeles, California.

4. S&T, formerly known as ArrivalStar S.A. and Melvino Technologies Limited, is a non-practicing entity that has filed over six-hundred patent infringement lawsuits and sent unknowable numbers of cease and desist letters seeking infringement rents. Based on a review of the last one hundred and ninety-six cases filed by S&T, none of these cases filed by S&T have reached the merits.

JURISDICTION AND VENUE

5. This Complaint arises under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 et seq. based on Defendant's threats to sue Plaintiff for patent infringement, thereby giving rise to an actual case or controversy under 28 U.S.C. §§ 2201 and 2202.

6. This Court has jurisdiction over these claims pursuant to 28 U.S.C. § 1338 and 35 U.S.C. § 271.

7. This Court has personal jurisdiction over S&T. S&T conducts substantial business in this judicial district, including regularly soliciting licensing revenues and engaging in other persistent courses of conduct and deriving substantial revenue from individuals and entities in California.

8. S&T has previously admitted that jurisdiction was proper over S&T in this

District. *See, e.g. FTL Apparel v. S&T*, Case No. 3:16-cv-01453, Dkt. No. 15, para.5.)

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) & (c) because a substantial part of the events or omissions giving rise to the claims herein occurred in this judicial district and because S&T is subject to the Court's personal jurisdiction with respect to, at a minimum, Plaintiff's claim for unclean hands.

10. S&T has previous admitted that venue is proper in this District. (*Id.* at para.14.)

FACTUAL BACKGROUND

11. On December 5, 2016, S&T sent a cease and desist letter to OEC, seeking licensing, past usage, and licensing monies. (Exhibit A, redacted.[1])

12. In multiple prior cases involving the Patents-In-Suit, S&T voluntarily dismissed its claims to avoid a ruling on the merits regarding invalidity under 35 U.S.C. § 101. *See, e.g.*, *Shipping and Transit, LLC v. Hall Enterprises, Inc.*, No. 2:16-cv-06535 (C.D. Cal.), Dkt. 15; *Shipping and Transit, LLC v. Lensdiscounters.com*, No. 9:16-cv-80980 (S.D. Fla.), Dkt. 30; *Shipping and Transit, LLC v. 1A Auto, Inc.*, No. 9:16-cv-81039 (S.D. Fla.), Dkt. 19.

13. S&T's positions and conduct in prior cases is the subject of multiple pending motions for attorney fees under 35 U.S.C. § 285. *See, e.g.*, *Shipping and Transit, LLC v. Hall Enterprises, Inc.*, No. 2:16-cv-06535 (C.D. Cal.), Dkt. 21; *Shipping and Transit, LLC v. Lensdiscounters.com*, No. 9:16-cv-80980 (S.D. Fla.), Dkt. 39; *Shipping and Transit, LLC v. 1A Auto, Inc.*, No. 9:16-cv-81039 (S.D. Fla.), Dkt. 25.

14. At least one court has issued a tentative ruling finding that the claims of the Patents-in-Suit are drawn to patent-ineligible abstract ideas.

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[1] OEC denies that the settlement privilege applies to this unsolicited letter but, out of an abundance of caution, OEC has redacted the demand amount. Suffice to say it is far below the cost of litigation.

15. Despite repeatedly dismissing its prior cases to avoid a ruling on the merits regarding the invalidity of the Patents-In-Suit under § 101, S&T has continued to press the Patents-In-Suit against new targets. For example, on May 25 2017, the Owner and CEO of S&T sent Plaintiff OEC an email stating that it had not heard back from OEC about its December 5, 2016 and, as such, would be "forced to move forward . . . within a few days" if OEC did not respond to its demands for a license. (Exhibit B, attached hereto.)

16. Given that S&T continues to seek license fees on patents that S&T has been unwilling to subject to a decision on the merits, OEC affirmatively seeks a determination that the Patents-In-Suit are invalid.

17. OEC also seeks costs and fees under Section 285 and this Court's inherent authority to sanction bad faith conduct.

COUNT ONE: INVALIDITY

18. The Patents-In-Suit are invalid under § 101 for, at least, the reasons cited in prior district court briefing. *See, e.g.*, *Shipping and Transit, LLC v. Hall Enterprises, Inc.*, No. 2:16-cv-06535 (C.D. Cal.), Dkt. 13, 21, 24.

COUNT TWO: INVALIDITY

19. The asserted claims of the Patents-In-Suit are invalid for failure to comply with one or more of the sections of the Patent Code governing validity, namely, 35 U.S.C. §§ 101, 102, 103, and 112.

NON-INFRINGEMENT

20. The Accused Product does not infringe the Patents-In-Suit as said product does not employ "the addition of real-time updating of vehicle status information based on real-world events, e.g. traffic conditions on a particular route, etc., which is beyond the fundamental

economic practice of requesting and receiving status information[,]" among other reasons.

21. In its opposition to a motion for invalidity pursuant to Section 101 in *S&T v. Hall*, S&T stated, "The inventive step in Plaintiff's inventions is the addition of ***real-time updating*** of vehicle status information based on ***real-world events***, e.g. traffic conditions on a particular route, etc., which is beyond the fundamental economic practice of requesting and receiving status information." However, in the claim charts included in S&T's cease and desist to OEC, S&T fails to include any allegations of real-time functionality, and in fact the Accused Product fails to meet the "real-time" limitations. Nonetheless, S&T seeks improper license fees.

PRAYER FOR RELIEF

OEC respectfully requests of this Court the following relief:

1. A determination that the Patents-In-Suit are invalid;
2. A determination that the Accused Product does not infringe the Patents-In-Suit;
3. Attorney's fees and costs under Section 285 and this Court's inherent authority; and
4. Any other relief this Court believes is just and proper.

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